

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

**JEREMY NANCE and Wife, TAMBRA
NANCE**
Plaintiffs

VS.

**STATE FARM FIRE AND CASUALTY
COMPANY**
Defendant

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§
§

C. A. NO. _____
JURY

DEFENDANT STATE FARM LLOYDS' NOTICE OF REMOVAL

Defendant State Farm Lloyds files this Notice of Removal.

I. PROCEDURAL BACKGROUND

1. Plaintiffs Jeremy Nance and Tambra Nance filed this action on May 23, 2017 against State Farm Fire and Casualty Insurance Company in the 76th/276th Judicial District Court of Morris County, Texas.¹ That case was docketed under cause number 26175.

2. On June 16, 2017, Plaintiffs filed their First Amended Original Petition.² Plaintiffs named State Farm Lloyds as a Defendant³ and nonsuited State Farm Fire and Casualty Insurance Company.⁴ State Farm Lloyds' attorney accepted service of the First Amended Original Petition on State Farm Lloyds' behalf. State Farm Lloyds filed its Original Answer and Special Exceptions on July 7, 2017.⁵

¹ See Ex. A-1, Pl.'s Org. Pet.

² See Ex. A-4, Pl.'s First Am. Org. Pet.

³ See Ex. A-4, Pl.'s First Am. Org. Pet. at the opening paragraph and para. 3.

⁴ See Ex. A -4, Pl.'s First Am. Org. Pet. Plaintiff omitted State Farm Fire and Casualty Insurance Company from the First Am. Org. Pet. As a general rule, omitting a party from an amended petition indicates an intent to nonsuit that party. See *American Petrofina, Inc. v. Allen*, 887 S.W.2d 829, 831 (Tex. 1994); *Webb v. Jorns*, 488 S.W.2d 407, 409 (Tex. 1972) (citations omitted); *Randolph v. Jackson Walker L.L.P.*, 29 S.W.3d 271, 274 (Tex.App.—Houston [14th Dist.] 2000, pet. denied) (citations omitted). See also *Green v. Vidlak*, 76 S.W.3d 117, 119-20 (Tex. App.—Amarillo 2002, no pet.) (even though defendant was listed in style of amended petition, omission of defendant's name from text of amended petition was a nonsuit).

⁵ See Ex. A-5, State Farm Lloyds' Org. Answer.

3. Plaintiffs' lawsuit against State Farm Lloyds shall hereinafter be referred to as "the State Court Action".

4. State Farm Lloyds files this Notice of Removal pursuant to 28 U.S.C. §1446 to remove the State Court Action from the 76th/276th Judicial District Court of Morris County, Texas to the United States District Court for the Eastern District of Texas, Marshall Division.

5. State Farm Lloyds filed a jury demand in the State Court Action on July 7, 2017.⁶

II. NATURE OF THE SUIT

6. Plaintiffs filed this lawsuit based on an insurance claim for a fire that damaged their home on April 26, 2014 (the Fire).

7. Plaintiffs assert causes of action against State Farm Lloyds for: (a) failure to pay the claim under the policy;⁷ (b) alleged violations of the Texas Insurance Code and the Deceptive Trade Practices Act;⁸ and (c) alleged breach of the duty of good faith and fair dealing.⁹

III. BASIS FOR REMOVAL

8. The Court has jurisdiction over this action under 28 U.S.C. §1332 because there is and was complete diversity between all parties and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

⁶ See Ex. A-6, State Farm Lloyds' Jury Demand.

⁷ See Ex. A-4, Pl.'s First Am. Org. Pet. at para. 6.

⁸ See Ex. A-4, Pl.'s First Am. Org. Pet. at paras. 7-8 and 13.

⁹ See Ex. A-4, Pl.'s First Am. Org. Pet. at paras. 9-12.

A. Diversity of the Parties

9. Removal is proper because there is and was complete diversity between the properly joined parties under 28 U.S.C. §1332 both at the time of the filing of Plaintiff's First Amended Original Petition and at the time of its removal to this Court.

10. Plaintiffs were, at the time of filing this lawsuit, and still are, citizen of Morris County, Texas and reside in Morris County, Texas.¹⁰

11. State Farm Lloyds was at the time this action was commenced, and still is, a citizen of Illinois and Arizona. State Farm Lloyds is a "Lloyd's Plan" organized under Chapter 941 of the Texas Insurance Code. It consists of an unincorporated association of underwriters who were at the time this action was commenced, and still are, all citizens and residents of Illinois and Arizona thereby making State Farm Lloyds a citizen of Illinois and Arizona for diversity purposes. See *Royal Ins. Co. of Am. v. Quinn-L Capital Corp.*, 3 F.3d 877, 882-83 (5th Cir. 1993) (citizenship of unincorporated association determined by citizenship of members).

12. Consequently, State Farm Lloyds may remove this action pursuant to 28 U.S.C. §1441 because complete diversity of citizenship exists.

B. Amount in Controversy

13. The value of the matter in controversy exceeds \$75,000.00, exclusive of interest and costs. Pursuant to Plaintiffs' First Amended Original Petition, Plaintiffs are seeking "a sum in excess of \$150,000.00."¹¹

14. Accordingly, the amount in controversy, exclusive of interest and costs is in excess of \$75,000.00, the requirement of 28 U.S.C. §1332(a).

¹⁰ See Ex. A-4, Pl.'s First Am. Org. Pet. at para. 2.

¹¹ See Ex. A-4, Pl.'s First Am. Org. Pet. at the Prayer, subsection 1.

IV. REMOVAL IS PROCEDURALLY CORRECT

A. State Farm Lloyds Notice of Removal is Timely Filed

15. Pursuant to 28 U.S.C. §1446(b)(3), State Farm Lloyds files this Notice of Removal within thirty days after service to State Farm Lloyds of an amended pleading which first showed the State Court Action to be removable.

16. The State Court Action was filed on May 23, 2017. However, at the time it was filed, State Farm Lloyds was not a party to the lawsuit. State Farm Lloyds was not added as a party to the lawsuit until June 16, 2017.

17. Therefore, this notice of removal is timely filed before the expiration of 30 days following the receipt of Plaintiffs' First Amended Original Petition naming State Farm Lloyds as a defendant.

B. State Farm Lloyds' Notice of Removal Complies With All Other Procedural Requirements

18. Venue is proper in this division under 28 U.S.C. §1441(a) because this district and division embrace the place in which the removed action has been pending.

19. In accordance with 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served upon State Farm Lloyds in the State Court Action are attached to this notice.¹² Additionally, all documents required by Local Rule 81 to be filed with this Notice of Removal are attached and indexed in Exhibit A.

20. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal will promptly be given to all parties and to the clerk of the 76th/276th Judicial District Court of Morris County, Texas.

¹² See Ex. A-1 through A-7 attached hereto.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, State Farm Lloyds demands a trial by jury.

PRAYER

State Farm Lloyds respectfully requests that the State Court Action be removed and placed on this Court's docket for further proceedings. State Farm Lloyds also requests any additional relief to which it may be entitled.

Respectfully submitted,

By /s/ Kathleen Crouch

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CERTIFICATE OF SERVICE

I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or *pro se* parties of record electronically or by another manner authorized by FED.R.CIV.P. 5(b)(2) on this 14th day of July, 2017, as indicated below:

M. Mark Leshner
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**VIA FACSIMILE: (903) 572-2893 &
ESERVICE**

/s/Kathleen Crouch
Kathleen Crouch